IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.313 OF 2004

IN

WRIT PETITION NO.250 OF 1994

WITH

CIVIL APPLICATION NO.90 OF 2006

Shri R.N.Gangwani & Anr. ...Petitioners

Versus

The State of Maharashtra & Ors. ...Respondents

.....

Mr.Niranjan P.Shimpi for Petitioners.

Mrs.S.S.Bhende, A.G.P. for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

AUGUST 10, 2006.

P.C.

1. Heard Counsel for the parties.

2. Grievance made in this Petition is regarding non-compliance of the direction given in order dated 9th July 2003 in Writ Petition No.250 of 1994 to the effect that the Director of the

Municipal Administration shall rehear the Petitioners on the question of their parity with the Assistant Engineer of the State Government working in the Irrigation Department. The Director of the Municipal Administration was further directed to take final decision within eight weeks from the date of the said order.

3. Pursuant to the notice issued by this Court, the Director of the Municipal Administration has filed affidavit sworn on 27th July 2006. In Paragraph 3 of the affidavit, it is noted as to what steps were taken for providing hearing to the Petitioners, including the fact that final decision has been taken on 18th June 2005. As the Director has already complied with the direction given in terms of Order dated 9th July 2003, it is not necessary to precipitate the matter any further.

4. Counsel for the Petitioners, however, submits that if the final decision has already been taken on 18th June 2005 as noted in the affidavit, no reason is forthcoming as to why that has not been communicated to the Petitioners. Besides, the

Respondents/Contemnors failed to appear before this Court till the Court ordered to issue bailable warrants against them to ensure their presence for the hearing and it is only thereafter, the affidavit has been filed in this Court sworn on 27th July 2006.

5. Insofar as the first grievance of the Petitioners is concerned, it is stated in Paragraph 3 of the affidavit that due to communication gap between the Corporation and the Petitioners, the final decision dated 18th June 2005 has not been served on the Petitioners till date. Copy of the decision of the Director was despatched on 18th June 2005 itself to the Corporation, which in turn, was expected to serve the same on the Petitioners who are the employees of the Corporation. Counsel for the Petitioners had argued that copy of the order dated 18th June 2005 placed on record appears to be afterthought. It is not possible to accept this submission. To reassure myself, I had called upon the Respondents to produce Outward Register for the relevant period. The Outward Register records despatch of the order dated 18th June 2005

to Ulhasnagar Municipal Corporation. Suffice it to observe that non-service of copy of the order dated 18th June 2005 on the Petitioners cannot be said to be defiance, much less, wilful defiance of the order of the Court, which only required the Director to rehear the Petitioners and take decision within eight weeks from the date of the order. The fault lies with the Office of the Ulhasnagar Municipal Corporation in not forwarding the copy of the order dated 18th June 2005 to the Petitioners, who are the employees of the Corporation.

6. Insofar as the latter grievance of the Petitioners is concerned, true it is, that the Contemnors did not appear before the Court inspite of service of show-cause notice in terms of order dated 21st November 2004. To secure their presence, this Court was eventually required to issue bailable warrants under order dated July 20, 2006. The Contemnors have appeared soon thereafter before this Court. In the affidavit filed before this Court sworn on 27th July 2006, explanation is offered about the circumstances in which no

appearance was made before this Court inspite of service of notice. It is stated by the Director in his affidavit that the fact that the matter was on Board for admission on 20th July 2006 was brought to his notice by the Department only on 24th July 2006, although his office had received the intimation about hearing on 20th July 2006, as early as on 28th June 2006. It is also stated that Departmental action against the erring Officer has been taken for having failed to inform the fact about the date of hearing of the Contempt Petition. Assurance is given by the Director, who is present in Court that the said proceedings will be taken to its logical end. That assurance is accepted. Even this grievance cannot be the basis to hold that it is a case of wilful defiance of the order of the Court. Accordingly, this Contempt Petition is dismissed and notice issued to the Contemnors stands discharged.

7. Order issuing bailable warrants against the concerned Contemnors stands recalled.

8. In view of the above order, accompanying

Civil Application stands disposed of.

A.M.KHANWILKAR, J.